

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERALD LEROY WINGEART,

Petitioner,

v.

Case Number: 05-74144

MILICENT WARREN,

Respondent.

**ORDER GRANTING PETITIONER'S "MOTION TO SUPPLEMENT
THE STATE COURT RECORD PURSUANT TO RULE 5
OF THE RULES GOVERNING SECTION 2254 CASES"**

Pending before the court is Petitioner Jerald Leroy Wingear's "Motion to Supplement the State Court Record Pursuant to Rule 5 of the Rules Governing Section 2254 Cases," filed on August 6, 2010 [Dkt. # 59]. For the reasons stated, the court grants Petitioner's motion.

Petitioner filed a *pro se* petition for a writ of habeas corpus on October 28, 2005 [Dkt. #1]. On November 10, 2005, the court ordered Respondent to answer the petition by May 8, 2006 [Dkt. #2]. In lieu of filing an answer, on May 8, 2006, Respondent filed a "Motion to Dismiss" [Dkt. # 6]. The Rule 5 materials were filed on May 12, 2006 [Dkt. ## 8-27].

Following, on August 10, 2006, the court granted Respondent's motion to dismiss; the petition contained claims which allegedly had not been exhausted in state court. In its opinion and order, the court directed that the petition would be stayed provided that Petitioner: (i) presented his claims in state court within sixty days of the

court's order staying the petition; and (ii) asked the court to lift the stay within sixty days of exhausting his state court remedies.

On October 16, 2009, the court lifted the stay and directed the Clerk of the Court to serve Respondent and the Michigan Attorney General. Respondent filed her response on December 15, 2009, and additional Rule 5 materials were filed on December 29, 2009. Petitioner filed his reply on January 21, 2010.

Petitioner now requests that he be permitted to file the relevant state trial court records that resulted from his motion for relief from judgment, which Respondent did not file. The court grants Petitioner's request.

Accordingly,

IT IS ORDERED that Petitioner's "Motion to Supplement the State Court Record Pursuant to Rule 5 of the Rules Governing Section 2254 Cases" is GRANTED. The attached Rule 5 materials are deemed filed.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 2, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 2, 2010, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522